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ABSTRACT

This report is an update, as of January 2001, of the status of California's state laws regarding mandatory and optional community college student fees. Key points include: (1) specific statutory authority is required to charge any fee that is required for registration, enrollment, entry into class, or completion of the required objectives of a course; (2) a basic enrollment fee is specifically authorized by statute, which was amended by Assembly Bill 1118 to reduce the fee to $11 per unit, effective fall 1999; (3) students who meet income standards under regulations of the Board of Governors, those who demonstrate financial need, and those who are recipients of benefits under certain state programs may be entitled to fee waivers--some special, part-time K-12 students may be exempt from paying fees as well; (4) Assembly Bill 3031 exempts students enrolled in specific credit contract education courses from fees if the cost of the course is being paid by the entity with which the district is contracting; (5) almost all noncredit courses are offered pursuant to sections 8531, 8532, 8533, and 8534 of the Education Code, and therefore districts have little authority to charge fees for these courses; and (6) Education Code section 76730 authorizes districts to charge students who audit courses a fee not to exceed $15 per unit per semester. Appended is an application of instructional materials regulations to specific instances. (NB)

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ED 457 904

# Community College Student Fees
# (Status of the Law as of January 1, 2001)

Ralph Black

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December 19, 2000

**TO:** Board of Governors
Superintendents and Presidents
Presidents, Boards of Trustees
Consultation Council
Chief Business Officials
Chief Instructional Officers
Chief Student Services Officers
Admissions Officers and Registrars
Financial Aid Officers
Community College Attorneys
Other Interested Parties

**FROM:** Ralph Black
General Counsel

**SUBJECT:** Update on Student Fees (Opinion M 00-41)

**Synopsis**: On December 14, 1999, we issued a memo providing information on student fees. The enclosed memo updates that document to reflect changes in student fees resulting from actions of the Legislature during the 2000 session as well as any pertinent formal or informal legal opinions issued from this office. This document will also be available on the Chancellor's Office web site at http://www.cccco.edu/cccco/lac/Notices/notices.htm.

Because this material is lengthy and complex, we used italics to indicate changes in the law or our interpretation of the law. Material in boldface is pre-existing information, which we believe deserves particular emphasis.

**Action/Date Requested**: Districts should take steps necessary to implement the legislative changes discussed in the attached memo.

**Contact**: Questions regarding financial aid procedures should be directed to Mary Gill at (916) 323-5951. Questions regarding nonresident tuition and treatment of fee revenue should be directed to Helen Simmons at (916) 327-6225. Other questions should be directed to Renee Brouillette at (916) 322-4145.

cc: Cabinet
Helen Simmons
Mary Gill
Renee Brouillette

FC01658

# COMMUNITY COLLEGE STUDENT FEES
(Status of the law as of January 1, 2001)

## I. BASIC LAW ON STUDENT FEES

Express statutory authority is required to charge any mandatory student fee; but optional student fees or charges may, under certain circumstances, be charged under the authority of the "permissive code," as set forth in section 70902(a) of the Education Code.

Under current law it is well settled that a student may only be required to pay a fee if a **statute requires it** (such as the enrollment fee), or if a **statute specifically authorizes a district to require it** (such as the health fee). In either instance, a student cannot be required to pay a fee in the absence of express legislative authority (see the following opinions of the Attorney General: 60 Ops.Cal.Atty.Gen. 353 (1977), and 61 Ops.Cal.Atty.Gen. 75 (1978)). The Board of Governors has underscored this policy through the adoption of a minimum standard regulation (Cal. Code Regs., Title 5, § 51012) which provides that a district may only establish such mandatory student fees as it is expressly authorized to establish by law.

If a fee must be paid as a condition of admission to a college; or as a condition of registration, enrollment, or entry into classes; or as a condition of completing the required classroom objectives of a course, the fee is mandatory (required) in nature. On the other hand, if the fee is for materials, services, or privileges which will assist a student, but are not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established. Examples of optional fees are parking fees (which are also authorized in section 76360 of the Education Code) and a student body card or student activities fee.

If a fee is required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, it can be classified as a "course fee." If a fee is for materials, services, or privileges which will assist a student, but is not otherwise required for completion of the required classroom objectives of a course, it can be classified as a "service fee." Under this classification structure, specific legislative authority is always required to charge any course fee. A variety of service fees are specifically authorized by statute. In addition, service fees meeting the test of the permissive code may be charged under the authority of that provision.

## II. COURSE FEES

Specific statutory authority is required to charge any fee which is required for registration, enrollment, entry into class, or completion of the required objectives of a course. The following fees are specifically authorized by statute:

**A. Nondistrict Physical Education Facilities:** Education Code section 76395 authorizes districts to impose a fee on participating students for the additional expenses incurred when physical education courses are required to use nondistrict facilities such as bowling alleys and golf courses. This authority became operative on January 1, 1992.

**B. Enrollment Fee:** the basic enrollment fee is required pursuant to Education Code section 76300. This statute was amended by AB 1118 (Stats. 1999, ch. 72) to reduce the fee to $11 per unit effective for the Fall 1999 term.

Unless expressly exempted, or entitled to a waiver or defrayal, all students enrolling for college credit must pay the enrollment fee. Fees are to be waived through the Board Financial Assistance Program for students who meet income standards established under regulations of the Board of Governors, those who demonstrate financial need in accordance with the methodology set forth in federal financial aid regulations, and those who, at the time of enrollment, are recipients of benefits under the California Work Opportunity and Responsibility to Kids (CalWORKs) Program (formerly Aid to Families with Dependent Children (AFDC)),[1] the Supplemental Security Income/State Supplementary Program, or a general assistance program.

**Generally, students must demonstrate eligibility for these Board of Governors Enrollment Fee waivers at the time of enrollment, but the Chancellor's Office takes the position that districts have the discretion to refund enrollment fees if a student later shows that he or she actually qualified for the waiver at the time of enrollment and applied for the waiver within the *academic year* for which the refund is sought.** Fees must also be waived for dependents of certain deceased or disabled veterans and California National Guard members upon certification of fee waiver eligibility by the California Department of Veterans Affairs or the National Guard Adjutant General. (See IV, H, below.)

**K-12 students admitted as special full-time or part-time students pursuant to Education Code section 76001 who are enrolled for college credit in community college courses are subject to the enrollment fee, but section 76300(f) permits the district governing board to exempt special part-time students (but not special full-time students) from paying the fee. There is nothing that would preclude a K-12 student who is subject to the enrollment fee from applying for a Board of Governors Waiver. Special full-time or part-time students enrolled in college courses only for high school credit are not subject to the enrollment fee and no waiver or exemption is necessary.**

Assembly Bill 3031 (Stats. 1996, ch. 63, § 1) amended Education Code section 76300 to exempt students enrolled in specified credit contract education courses from the

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[1]Congress passed, and President Clinton subsequently signed H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), which discontinued the Aid to Families with Dependent Children (AFDC) program and substituted in its place block grants to states for Temporary Assistance to Needy Families (TANF). States were required to implement TANF no later than July 1, 1997, and to this end the California Legislature passed an urgency bill, AB 1542 (Stats. 1997, ch. 270), which amended state laws that refer to the AFDC program and added section 10063, of the Welfare and Institutions Code which changed the name of California's AFDC, Family Group, and Unemployment programs to the California Work Opportunity and Responsibility to Kids program (CalWORKs).

It is thus the opinion of the Chancellor's Office that fee exemptions or waivers referencing AFDC recipients should be construed to refer to those eligible for CalWORKs.

enrollment fee if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting, and if these students are not included in the calculation of the average daily attendance of that district. This change became effective January 1, 1997.

The Board of Governors has adopted regulations to implement the enrollment fee in sections 58500 - 58508 of Title 5 of the California Code of Regulations. The Board's regulations on financial aid are set forth at Title 5, section 58600 et seq.

**C. Noncredit Courses:** While the law appears to authorize fees for certain noncredit courses, districts actually have very little authority in this area. Education Code section 76380 authorizes governing boards to require students to pay a fee for noncredit courses which are not eligible for state apportionment. Noncredit courses eligible for state apportionment are listed in section 84757 of the Education Code. Before charging a fee for a noncredit course not eligible for state apportionment, a district should ensure that the fee is not prohibited by section 76380 of the Education Code. Section 76380 prohibits fees for adults enrolled in English and citizenship for foreigners, a class in an elementary subject, a class designated by the governing board as a class for which high school credit is granted (when the person taking the class does not have a high school diploma), and any class offered pursuant to sections 8531, 8532, 8533, and 8534 of the Education Code. Since almost all noncredit courses are offered pursuant to one of the above provisions, districts have very little authority to charge fees for noncredit courses.

Finally, it should also be noted that the fact that a district is over cap and is not receiving apportionment does not enable the district to use the authority of section 76380 to charge students a fee for certain courses.

**D. Community Service Classes:** Education Code section 78300 authorizes districts to charge students taking community service classes a fee not to exceed the cost of maintaining community services classes. Community service classes are intended to be self-supporting, and districts are prohibited from using state General Fund money (apportionment) to establish and maintain such classes.

A number of questions have arisen about the authority of districts to convert noncredit and/or credit offerings to community service classes. This practice is not prohibited by statute; however, it is not possible to award community college credit for taking such community service classes. To allow credit to be awarded within fee-based community service classes would be inconsistent with the enrollment fee statute. On the other hand, in Legal Opinion O 94-25 we concluded that a community college district may convert a noncredit course to a community service class unless the class is a direct and integral part of the credit program (e.g., the class is required as a prerequisite for a credit course).

**E. Fee to Audit Courses:** Education Code section 76370 authorizes districts to charge students who audit courses a fee not to exceed $15 per unit per semester. Students auditing are prohibited from changing their enrollment to credit status, and the attendance of auditors is not included for purposes of state apportionment.

Please note that students enrolled for credit in ten or more semester units may audit an additional three or fewer units without paying this fee. There is no authority for districts which establish this fee to allow any other type of waiver.

**F. Instructional Materials:** Education Code section 76365 allows districts to require that students provide various types of instructional materials and enables districts to sell

such materials to students who wish to purchase the required materials from the district. Generally speaking, there is really no such thing as an "instructional materials fee;" instead, the student is being given the opportunity to purchase certain required course materials from a district.

Section 76365 has been implemented by regulations of the Board of Governors found in sections 59400-59408 of Title 5 of the California Code of Regulations. **The law provides that students can only be required to provide materials which are of continuing value to the student outside of the classroom setting, including, but not limited to textbooks, tools, equipment, clothing, and those materials which are necessary for a student's vocational training and employment.** The regulations further provide that "instructional and other materials" means tangible personal property that is owned or primarily controlled by the student.

"Required instructional and other materials" are materials which the student must procure or possess as a condition of registration, enrollment, or entry into a class; or any material which is necessary to achieve the required objectives of a course.

**Finally, the regulations specify that the material must not be solely or exclusively available from the district. A material will not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost, and there are health and safety reasons for the district being the provider, or if the district is providing the material cheaper than it is available elsewhere.**

It is important to remember that these regulations only apply to materials which are required as a condition of registration, enrollment, etc. If a material is helpful to students, but is not required, then it may be sold to students under the authority of the permissive code. The material need not be tangible personal property; it need not be of continuing value outside the classroom setting; and it can be available exclusively from the district.

Education Code section 81458 provides additional authority for districts to sell materials to students taking noncredit classes. Section 81458 authorizes districts to sell materials that may be necessary for the making of articles by persons in the class. The materials are to be sold at the cost to the district, and the article becomes the property of the student.

Please note that districts may not charge an across-the-board or per unit instructional materials fee (see Legal Opinion O 93-12). Students may only be required to pay for instructional materials under the circumstances described above.

Appendix A contains a detailed analysis of the kinds of materials that may and may not be required under the instructional materials regulations.

**G. Nonresident Tuition:** Section 76140 requires districts to charge a nonresident tuition fee in the event it chooses to admit nonresidents. The statute provides various methods/options for computing the nonresident tuition fee. It also provides that any district that has fewer than 3,001 FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California may exempt students from that state from paying nonresident tuition, but such students must pay a fee of $42 per unit.[2]

[2] Pursuant to section 76140(j) districts that have more than 1,500, but less than 3,001, FTES may exempt no more than 100 FTES per year from any bordering state with a reciprocity agreement. *The position of the*

*Questions have been raised about charging tuition to students enrolled in distance education courses. At this time, the law does not exempt nonresident students enrolled in distance education courses from paying nonresident tuition. Students enrolled in distance education courses are subject to the same residency determination requirements and exemptions as traditional students. If a student enrolling in a distance education course is deemed to be a nonresident, that student is subject to nonresident tuition.*

Districts are authorized (but not required) to exempt all nonresidents who take six or fewer units. Districts are also authorized to exempt, on an individual basis, nonresidents who are both citizens and residents of foreign countries.

It should also be noted that Education Code section 76141 authorizes districts, subject to certain limitations, to charge citizens and residents of foreign countries a fee for the support of capital outlay which may not exceed 50% of the amount charged for nonresident tuition.[3]

Districts are required to exempt from nonresident tuition various groups of students including:

1. Students taking noncredit classes;

2. Apprentices taking classes of related and supplemental instruction; (Ed. Code § 76350 and Labor Code 3074)

3. Certain police academy trainees, and certain job transferees (See Ed. Code, §§ 76140.5 and 76143);

4. Students who are members of the armed forces of the United States stationed in this state on active duty, except those assigned to California for educational purposes (see Ed. Code, § 68075);[4]

5. Students who are a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces (see Ed. Code, § 68074);[5]

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*Chancellor's Office is that the $42 fee specified in section 76140(k) is intended to be a fee in lieu of the enrollment fee required by section 76300. Therefore, students charged this fee should not also be required to pay the enrollment fee. We are pursuing legislation to codify this policy.*

[3] For holders of a TN/TD visa created for business persons and professionals who are citizens of Canada and Mexico under the North American Free Trade Agreement (NAFTA), in *Carlson* v. *Trustees*, USDC Case No. 98-8152 R (Ex) (1999), the federal district court found that: 1) The holder of a TN/TD does not have the legal capacity to possess the requisite intent to establish domicile and thus cannot be granted residency status in California; and 2) NAFTA did not intend to allow individuals entering the U.S. under its provisions the ability to establish domicile in the U.S.A. Dismissing the plaintiff's case in its entirety, the court confirmed that opinion as a matter of law on May 24, 1999. Districts were notified shortly thereafter to follow the court's ruling in Carlson and deny California residency for purposes of tuition to students with NAFTA TN/TD visas as a matter of law.

[4] *In Legal Opinion 99-21 we concluded that service in the California National Guard does not constitute being a member of the armed forces of the United States for purposes of Education Code sections 68074 and 68075.*

[5] *AB 1346 (Stats. 2000, ch. 571, § 1) amended Education Code section 68074 and repealed section 68074.1 to provide permanent residency for dependents of members of the armed forces rather than the previous one-year waiver prior to establishing residency.*

6. A parent who is a federal civil service employee and his or her natural or adopted dependent children if the parent moved to California as a result of a military realignment action that involves the relocation of a least 100 employees (see Ed. Code, § 68084, added by Stats. 1998, ch. 952 (AB 639), eff. Sept. 29, 1998); and

7. Minor students taking a class for high school credit only.[6]

Finally, it is important to keep in mind that students exempted from paying nonresident tuition are still required to pay the enrollment fee unless explicitly exempted from that fee. Students charged nonresident tuition are also subject to the enrollment fee.

**H. Athletic Insurance:** Prior to January 1, 1991, Education Code section 76470 authorized districts to make medical or hospital service available, through group, blanket or individual policies, to students of the district participating in athletic activities under the jurisdiction of the district. The cost of the insurance could be paid from district funds, by participating students, or by their parents. Effective January 1, 1991, section 76470 was repealed. The repealing legislation, however, explicitly stated that even though section 76470 was being repealed, districts continued to have all of the authority of that provision under the general authority of the permissive code (see also Stats. 1990, ch. 1372, § 1). It is the position of the Chancellor's Office that districts continue to have legal authority to require a student to pay a fee for insurance as a condition of enrollment or participation in an athletic program.

**I. Cross Enrollment:** During the 1994 session the Legislature passed, and the Governor signed, Senate Bill 1914 (Stats. 1994, ch. 552) which added Chapter 9.5 (commencing with section 66750) to the Education Code concerning cross-enrollment.[7] This program, which became effective for the Fall 1995 term, permits students who are enrolled at a community college, a campus of the California State University or a campus of the University of California, under certain limited circumstances, to cross-enroll in one state-supported course per term at an institution from one of the other systems on a space-available basis at the discretion of the appropriate campus authorities on both campuses. Such students do not need to go through the formal admissions process and are exempt from required fees, except that the host campus may charge participating students an administrative fee, not to exceed ten dollars ($10) per academic term.

A student is qualified to participate in the cross-enrollment program if he or she is enrolled in any campus of the California Community Colleges, the California State University or the University of California and meets the following requirements:

(a) The student has completed at least one term at the home campus as a matriculated student and is taking at least six units at the home campus during the current term;

(b) The student has attained a grade point average of 2.0 for work completed;

(c) The student has paid appropriate tuition or fees, or both, required by the home campus for the academic term in which the student seeks to cross-enroll; and

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[6] When the minor takes a class for college credit, the nonresident fee should be charged.

[7] This section was due to "sunset" on January 1, 2000; however, the sunset provision was extended to January 1, 2004, by SB 361 (Stats. 1999, ch. 688).

(d) The student has the appropriate academic preparation, as determined by the host campus, consistent with the standard applied to currently enrolled students, to enroll in the course in which the student seeks to enroll.

Students who are cross-enrolled from another segment are not required to participate in the community college matriculation program, but such students can be required to meet any prerequisites or corequisites which have been properly established for the course.

The Chancellor's Office worked with representatives from the California State University and the University of California to establish guidelines for this program. These guidelines were issued by the Intersegmental Coordinating Council in June of 1995.

## III. FEES FOR SERVICES

Some fees for services are explicitly authorized by statute while others may be charged under the authority of the permissive code so long as they are not required as a condition of registration, enrollment or completion of a course. In other words, the student can be required to pay for a service where the service is truly optional and is not tied to registration, course enrollment or completion. In deciding whether or not to charge for a particular service, we recommend that districts balance the need to cover their operating costs with the fact that even modest additional fees may effectively restrict access for students who are least able to pay. The State has exempted students receiving public benefits and those who demonstrate financial need from many mandatory fees and districts may wish to consider extending this policy to optional service fees.

The following fees for services are specifically authorized by statute:

**A. Health Fee:** Education Code section 76355 authorizes a community college district to charge a fee not to exceed $10 per semester, up to $7 for summer sessions or intersession of at least four weeks in length, or up to $7 per quarter for health supervision and health services. The governing board of a district may increase the health fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever the calculation produces an increase of $1 above the existing fee, the fee may be increased by $1.[8]

Generally speaking, the fee may be charged of all students, whether or not they choose to use the health services. Part-time students may be exempted *or required to pay a portion of the full fee*. On the other hand, districts must exempt apprentices, low-income students (those eligible for a Board of Governors Enrollment Fee Waiver), dependent children and surviving spouses of members of the California National Guard who are killed or permanently disabled while in the active service of the state, and students who depend on prayer for healing.

*Questions have arisen about the authority of districts to exempt additional categories of students such as minors and students taking only distance education courses. Since the language of the statute is permissive, designating additional categories of students as exempt from the health fee is not prohibited under the law.*

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[8]Pursuant to Education Code section 76355, on March 5, 1997, the Chancellor issued a memo authorizing the districts to raise the maximum health fees by $1.00 to $11.00 per semester and $8.00 per summer session or intersession. The fee increase was based on calculations by the Department of Finance and the Implicit Price Deflator Index and was effective for the first quarter of 1997.

**B. Parking Fee:** AB 2812 (Stats. 1998, ch. 954), The 1998 Higher Education Omnibus Act, reorganized and consolidated community college parking fee laws by repealing Education Code sections 76360, 76361, 76361.5, 76390, and 76391, and replacing them with new sections 76360 and 76361. As in the previous version, newly enacted section 76360 authorizes districts to require students and employees to pay a fee of up to $40 per semester ($20 per intersession) for parking. For students ridesharing or carpooling, as defined, section 76360 retains the previous maximum fee of $30 per semester and establishes a maximum of $10 per intersession. Under new section 76360(b), the authority to charge parking fees above these limits, previously restricted to Glendale, Pasadena and Santa Monica Community College Districts, is extended to all districts, but only under specific circumstances as follows:

> "(b) The governing board may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) for the purpose of funding the construction of on-campus parking facilities if both of the following conditions exist at the campus:
>
> (1) The full-time equivalent (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.
>
> (2) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.
>
> If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a), the fee may not exceed the actual cost of constructing a parking structure."

Under section 76360, low income students remain exempt from parking fees over $20 per semester. Low income students are described in section 76300(g) as those who demonstrate financial need under federal standards or income standards established by the Board of Governors and students receiving benefits under the CalWORKs Program (formerly Aid to Families With Dependent Children), the Supplemental Security Income/State Supplemental Payment Program or a general assistance program. (See Legal Opinion L 94-12).

Also unchanged under section 76360, parking fees may not exceed the actual cost of providing parking and may only be charged to those who use the parking facilities. Parking fees may only be expended for parking services or for reducing costs to students and employees using public transportation to and from school. And, finally, section 76360 continues to provide that the governing board may require persons other than students and employees to pay fees for using the parking facilities. (However, Education Code section 67301(b) requires the Board of Governors to adopt regulations requiring the governing board of each community college district to provide visitor parking at each campus at no charge for a disabled person or veteran and for persons providing transportation services to individuals with disabilities. Regulations in conformance with this requirement are contained in section 59306(a) of Title 5.)

*In legal opinion 00-07 we concluded that while Education Code section 76360 provides that parking fees collected by a community college "shall be expended only for parking services ..." the law does not assign any particular priority to the various types of*

*parking service expenses. (Ed. Code, § 76360(e)). As such, districts may use their discretion when allocating parking fees for various parking services such as parking security, repair, and maintenance.*

**C. Transportation Fee:** AB 2812 (Stats. 1998, ch. 954) also reorganized and consolidated the statutes related to community college transportation fees by repealing Education Code sections 76360, 76361, 76361.5, 76390, and 76391, and replacing them with new sections 76360 and 76361. In the revised version of section 76361, a district's authority to require students and employees to pay a fee for the purpose of reducing fares for services provided by common carriers or municipally-owned transit systems, is expanded to include the authority to require payment of a fee to partially or fully recover transportation costs incurred by the district. Previously, only Butte Community College District had the authority to require payment of transportation fees to recover district transportation costs. Section 76361(b) provides that only those students and employees who use the transportation services may be required to pay the fees, or in the alternative, a district may charge transportation fees regardless of actual usage, in two situations:

> (1) All students and employees may be required to pay a transportation fee if a majority of the students and a majority of the employees vote for such a proposition; or
>
> (2) All students may be required to pay a transportation fee if a majority of the students vote that all students will pay. In this instance, the employees are not entitled to use the services.

As before, elections may be held on a campus-by-campus basis. However, the fees levied by election are no longer limited to a two year period, but instead remain valid for "a period of time to be determined by the governing board of the district." (Ed. Code, §§ 76361(b)(1) and 76361(b)(2)). Under previous law, only Butte Community College District had the authority to designate a time period greater than two years, during which the transportation fees authorized by an election would be valid.

Note: As with previous law in this area, it remains unclear whether a majority of all students/employees on a campus is required, or whether a majority of students/employees voting is required. The Chancellor's Office has not rendered an opinion with regard to this issue and believes the Legislature is the appropriate body to clarify intent.

The maximum amount of transportation and parking fees levied by a district may not exceed $60 per semester or $30 per intersession, or a proportionate equivalent for part-time students.

Low income students (those eligible for a Board of Governors Enrollment Fee Waiver) must be exempted, and part-time students must have their fees prorated based on the number of units in which the part-time student is enrolled. Finally, the governing board may require payment of a fee, to be set by the governing board, for the use of transportation services by persons other than students and employees.

Additional authority for transportation fees is set forth in Education Code section 82305.6. This section provides that when the district provides for the transportation of students to and from the colleges, the governing board may require the "parents and guardians of all or some of the students transported to pay a portion of the cost of such transportation. . . ." The amount charged can be no greater than that paid for

transportation on a common carrier. Parents and guardians who are indigent are exempt, and no charge can be made for transporting handicapped students.

It is the opinion of the Chancellor's Office that, under the authority of the permissive code, a district can provide for transportation of students to and from the colleges, and that students who wish to avail themselves of this district service can be required to pay a fee. As long as students are not required to take this transportation, but rather have it available as an option, this is a service that may be provided for a fee under the authority of the permissive code.

**D. Student Representation Fee:** Education Code section 76060.5 provides that a mandatory student representation fee of $1 per semester may be charged of all students, upon a favorable vote of two-thirds of students voting in an election on the matter (provided that the number of students who vote equals or exceeds the average of the number of students who voted in the previous three student body elections). The statute provides certain reasons that students may refuse to pay the fee. The statute has been implemented by regulations of the Board of Governors, set forth in Title 5, sections 54801-54805.

In Legal Opinion L 98-09, we concluded that a newly formed student government organization cannot order an election for the purpose of having the student body vote to establish a student representation fee without having held three prior student body elections. In specifically requiring three previous student body elections prior to raising the student fee issue, the intent of the Legislature is to ensure meaningful participation in the student body election process. However, under certain circumstances, voting results from student body elections held under a previous and related student government structure may satisfy this requirement.

**It is the opinion of the Chancellor's Office that revenues from the student representation fee can be used for any purpose related to representing the views of students with governmental bodies. Such revenue can be used to travel to and from conferences sponsored by CalSACC or similar student organizations, to purchase computer equipment needed to conduct legislative research, to subscribe to legislative publications, or to pay for any other expense reasonably necessary to effectuate student representation activities. (See Legal Opinion O 95-24.)**

Districts which have established or are contemplating establishing a student representation fee should be aware that there has recently been considerable litigation on student fee issues, including *Smith* v. *Regents of the University of California* (1993) 4 Cal.4th 843, *cert.den.* 114 S.Ct. 181 in which the courts held that the First Amendment to the U.S. Constitution precludes the University of California from charging students a mandatory fee which is used to support political activities. However, we believe a challenge to the community college student representation fee on such grounds is less likely because the fee is explicitly authorized by statute and because students may refuse to pay the fee on political grounds.

**E. Student Center Fee:** Education Code section 76375 authorizes districts to establish an annual building and operating fee, for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center. The fee may be required of all students attending the community college where the center is located. The fee can only be imposed after the favorable vote of two-thirds of the students voting in an election held for that purpose. The fee cannot exceed $1 per credit hour, up to a maximum of $10 per student per year. Noncredit enrollees cannot be required to pay the

fee, nor can recipients of CalWORKs (formerly AFDC), SSI/SSP, or general assistance. The Board of Governors has adopted regulations to implement this fee in section 58510 of Title 5 of the California Code of Regulations.

**F. Student Records:** Education Code section 76223 authorizes districts to make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record, provided that no charge can be made for furnishing up to two transcripts of students' records or up to two verifications of various records of students. No charge may be made for the cost to search for or retrieve any student record. It should be noted that federal law and regulation prohibit the charging of fees for any documentation required for a student's receipt of Title IV student financial aid.

*In Legal Opinion 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain.* (See also IV, D, Student Identification Card, below.)

**G. Dormitory Fee:** Education Code section 81670 authorizes districts to construct and maintain dormitories, and to fix the rates that will be charged to students for quarters in the dormitories.

**H. Child Care:** Prior to January 1, 1991, Education Code section 79121 provided that community college districts could accept student fees, parent fees, and private funds to operate campus child development centers. After a series of complicated legislative changes, section 79121 and a related provision now located at section 66060 continue to authorize operation of child development centers, but neither section expressly mentions fees. Nevertheless, it is the opinion of the Chancellor's Office that districts have the authority to charge student parents a fee for child care services for their children. The fees are being charged to parents who voluntarily choose to use this service. However, a district cannot charge a student a fee other than the enrollment fee to enroll in child development classes.

**I. Nonresident Application Processing Fee:** Education Code section 76142 authorizes community college districts to charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of (1) the actual cost of processing an application and other documentation required by the federal government, or (2) $100, which may be deducted from the tuition fee at the time of enrollment. No processing fee can be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Education Code section 76140, or who can demonstrate economic hardship (as defined by the district in accordance with certain parameters specified in statute).

**J. Use Fee for Facilities Financed by the Issuance of Revenue Bonds**

When the construction of a facility is financed by the issuance of revenue bonds, Education Code section 81901(b)(3) authorizes the governing board of a community college district to "fix rates, rents, or other charges for the use of any project acquired, constructed, equipped, furnished, operated or maintained by the board, or for services rendered in connection therewith." In Legal Opinion L 97-17 we held that section 81901(b)(3) allows districts to charge students a fee for the use of such facilities. In particular, where a student center is constructed using revenue bonds, this allows the district to charge a fee that exceeds the maximum $10 student center fee provided for in Education Code section 76375. However, Opinion L 97-17 also holds that section 81901(b)(3) authorizes a use fee, and thus does not authorize districts to charge a blanket fee to all students.

It would be justifiable for all students attending classes where the facility is located to be assessed a fee for use of such a facility. It would be reasonable to charge a use fee to students attending classes at other nearby locations, if those student occasionally come to the main campus to use the facility. However, in our view, it is not permissible to charge such use fees to students attending classes at remote locations, especially sites outside of the district, unless there is evidence that students in those classes use the facility on at least an occasional basis. One possible approach would be to give students attending classes at remote locations the option to decline to pay the fee, with the understanding that they then lose any right to use the facility.

**K. Credit by Examination:** *Fees charged for credit by examination offered pursuant to Title 5, section 55753 have been determined to be optional fees for service. A reasonable fee for credit by examination is the per unit fee of $11.00 established by Education Code section 76300.*

## IV. PROHIBITED PRACTICES

The following kinds of fees may not be charged under current law:

**A. Late Application Fee:** Education Code section 72251, effective January 1, 1992, would have authorized districts to charge up to $2 for a late application fee. However, this section was repealed, effective July 16, 1991, and the Chancellor's Office has determined that a late application fee cannot be charged under the authority of the permissive code.

**B. Add/Drop Fee:** Education Code section 72250.5, effective January 1, 1992, would have authorized districts to charge up to $1 for the cost of making program changes initiated by a student. However, this section was repealed effective July 16, 1991, and the Chancellor's Office has determined that an add/drop fee cannot be charged under the authority of the permissive code.

**C. Mandatory Student Activities Fee:** There is no statutory authority for charging a mandatory student activities fee. However, an optional or voluntary student activities fee is permissible. Questions have been raised regarding the legality of the "negative check-off" approach to collecting a student activities fee. Under this approach the student, when registering or enrolling, is given the option of checking a box that he or she does not choose to pay a student activities fee. If the student checks the box, he or she will not be charged the fee. If the student does not check the box, the fee will be assessed. Since this negative check-off approach preserves a student's option to pay or not pay the fee, it is both legal and appropriate. The test to be applied in implementing a negative check-off approach is that a reasonable student going through the enrollment process and reading

the forms must understand that he or she has the option of paying or not paying the student activities fee.

*Questions have also been raised about the legality of a system of student activity fee collection that requires the student to obtain a signature of a district official to waive the fee. Since the student's option to pay is preserved, the method is technically legal. However, because additional tasks are required of both the student and the district to process a student's desire to waive an optional fee, this method is fraught with potential problems. To implement a sign-off system, the district must take every precaution to ensure that officials authorized to sign off the fee for students are on-site and* ***easily accessible*** *during the registration. The test to be applied here is whether opting not to pay the fee is unduly burdensome. For obvious reasons, this system is not an option for mail, on-line, or telephone registration.*

**D. Student Identification Card:** In Legal Opinion L 97-11, we concluded that a district cannot charge a mandatory fee for a student identification card, even if the card also has other purposes, such as use as a debit card for purchase of instructional materials. Education Code section 76365, and the implementing regulations contained in Title 5, section 59400 et seq., permit districts to require students to provide certain instructional materials at the students' own expense. However, Legal Opinion L 97-11 specifically concluded that student ID cards do not fall under the definition of "instructional materials" contained in Title 5, section 59402(b), and thus, charging a fee for a student ID card cannot be justified. *Similarly, in Legal Opinion 00-05, we concluded that since there is no statutory authority for such a fee, a district may not charge a fee to replace a student ID card that was initially issued at no charge.* (See also II, F, Instructional Materials, above.)

This does not mean that a district cannot offer students the opportunity to purchase such a card in order to obtain certain optional benefits such as faster registration, ease of purchasing at the bookstore, etc. We also find no reason to believe that a district may not provide students, at district expense, with a card which students are then required to use for certain identification purposes. *In Legal Opinion 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain.* (See also III, F, Student Records, above.)

**E. Fees Charged Through Student Body Organizations:** Unless expressly provided by statute, a student body organization cannot charge a fee that a district governing board does not have authority to levy. It should be noted, however, that student body organizations may charge students a student activity fee or sell them a student body card so long as the fee or charge is optional as discussed under C, Mandatory Student Activities Fee, above.

**F. Nonresident Application Fee:** The Chancellor's Office has determined that a nonresident application fee cannot be imposed on residents of other states under the authority of the permissive code. Since payment of the fee would be a condition of enrollment in or attendance in classes, it cannot be imposed without specific legislative authorization. However, as discussed above, such a fee is authorized with respect to citizens and residents of foreign countries under Education Code section 76142.

**G. Field Trips:** Education Code section 72640, relating to field trips, was repealed, effective January 1, 1991. Provisions on field trips are now found in sections 55450-55451 of Title 5 of the California Code of Regulations. Section 55450(d) prohibits students from being required to pay a fee in order to participate in an instructionally related field trip. Previously, districts could charge students for field trips outside the State, but in May 1993 the Board of Governors amended section 55450 to clarify that students cannot be charged for field trips either inside or outside the State. However, districts are not required to pay the costs of meals, lodging, and other "incidental expenses" of students participating in field trips.

These provisions effectively mean that districts cannot charge fees for arranging field trips, but students can be asked to pick up their expenses of meals, lodging, and incidental expenses. A district would be authorized to put a meals and lodging package together, which a student could choose to purchase from the district or secure on his/her own. Finally, the regulations continue to provide that no student is to be prevented from making a field trip or excursion because of a lack of sufficient funds. This language has been carried over from the statute and continues to apply.

Some questions have been raised regarding districts charging students "entrance fees" for field trips to concerts, museums, plays, etc. In Legal Opinion M 96-17 we held that entrance fees should be considered "incidental expenses" which students can be asked to pay. However, as with other types of field trips, a student cannot be excluded from the event due to lack of funds.

**H. Fees for Dependents of Certain Veterans:** Education Code section 32320 provides that community college districts are prohibited from charging "any fees, including enrollment fees, registration fees, or incidental fees" to any of the following:

(1) Any dependent eligible to receive assistance under Article 2 (commencing with section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(2) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the Department of Veterans Affairs determines the child eligible on the basis that the annual income of the child, including the value of any support received from a parent, does not exceed the national poverty level for one person as most recently calculated by the Bureau of the Census of the United States Department of Commerce.[9]

[9] Education Code section 32320 was amended by Senate Bill 251 (Stats. 1999, ch. 689) to provide that the maximum income level of a child who would not be charged tuition or fees under this provision would be the national poverty level rather than the existing flat amount of $7,000 and that a person who is eligible for the waiver of tuition or fees under these provisions may apply for each academic year during which he or she applies for that waiver, but an eligible person may not receive a waiver of tuition or fees for a prior academic year.

(3) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

Section 32320 excludes a dependent of a veteran who is declared missing in action or a prisoner of war as provided in paragraph (4) of subdivision (a) of section 890 of the Military and Veterans Code. Thus, these students may continue to be charged such fees.

It is not entirely clear what is encompassed by the phrase "incidental fees" as used in section 32320. However, in order to be consistent with the policy of the Department of Veterans Affairs, which is applicable at the University of California and the California State University, we recommend that all fees beyond the enrollment fee which are required for admission, registration, enrollment or completion of a course (i.e., required course fees listed in items A, C, D, E, F, and H under section II, above) be considered "incidental fees." Note, however, that colleges are allowed to charge nonresident tuition to these students.

In Legal Opinion 94-14, we specifically held that parking fees are not incidental fees and that a student activity or ID card fee, which is entirely voluntary (see C, D and E under section IV, above), is not an incidental fee so long as admission, registration, enrollment or completion of a course is not effectively restricted for students who decline to pay the fee. Thus, the exemption afforded by section 32320 does not apply to these fees. On the other hand, a student center fee would be considered an incidental fee if a student is precluded from taking credit courses unless he/she pays the fee. But, if the same credit courses are concurrently available elsewhere in the district without payment of the student center fee, the fee would not be an access barrier and the exemption under section 32320 would not apply.

**I. Fees for Required or Funded Services:** It is the opinion of the Chancellor's Office that community college districts may not charge students a fee for use of a service which the district is required to provide by state law or which the district is already funded to provide. For example, in Legal Opinion L 95-23 we concluded that a district may not charge students a fee for counseling services the district is required to provide under Education Code section 72620 or Title 5, section 51018. Nor may a district charge students an additional fee for use of health services which are already funded from student health fees collected pursuant to Education Code section 76355.

**J. Refundable Deposits:** In Legal Opinion L 95-23 we also held that a "refundable deposit" amounts to a fee if it is required as a condition of registration, enrollment, or entry into classes, or as a condition of completing the required classroom objectives of a course. Therefore, statutory authority is required in order to impose such a charge on a student regardless of whether it is characterized as a "refundable deposit" or as an ordinary nonrefundable fee.

**K. Fees for Distance Education:** In Legal Opinion L 95-33 we held that a district may not charge an additional mandatory fee for a credit course delivered via Internet where the additional fee is intended to cover the cost of Internet access. If instruction is offered as a community service class without credit, a district could charge students for the cost of Internet access necessary to participate in the class. Such a fee could also be charged for a credit course if it is truly optional (the student can participate effectively without

paying the additional fee), but, there is no statutory authority for charging such a fee for a credit course if the fee is mandatory.

**L. Mandatory Mailing Fees:** There is no express authority for requiring students, as a condition of enrollment, to pay a fee to cover the costs of mailing grade reports, registration packets and other student documents. As discussed in III, F, above, Education Code section 76223 authorizes charging students for "the actual cost" of providing copies of student records. However, in Legal Opinion M 96-17 we explained that this permits charging a flat fee for mailing costs only if all the following conditions are met:

(1) Students are not charged for mailing documents other than individual student records (e.g. published class schedules or registration packets that do not relate specifically to a particular student);
(2) No student is charged an amount in excess of the actual cost of furnishing the records he or she receives;
(3) Students are advised that they will not be barred from registering or enrolling in any course if they decline to pay the fee; and
(4) Students are advised that if they do not wish to be charged for mailing costs they may come to campus to obtain and pay for copies of student records.

**M. Mandatory Fee for Rental of Practice Rooms:** In Legal Opinion M 96-17 we also considered a situation where a college charged music students a mandatory fee for the use of practice rooms which they were required to use as a part of their class assignments. We held that this could not be justified as an instructional materials fee and that there was no other statutory authority for the practice. However, it would be permissible for a college to make practice rooms available for students who are willing to pay an optional service fee for their use.

***N. Apprenticeship Courses:*** *Education Code section 76350 prohibits community colleges from imposing resident or nonresident charges or fees for apprenticeship courses offered pursuant to Labor Code section 3074. On the other hand, in Legal Opinion 00-22 we concluded that enrollment fees may be charged to apprentices enrolled in courses which are not counted toward satisfying the related and supplemental instruction required under the apprenticeship agreement described in section 3074.*

## APPENDIX A

## APPLICATION OF INSTRUCTIONAL MATERIALS REGULATIONS TO SPECIFIC INSTANCES

### A. SUGGESTED APPROACH

The following is a suggested approach for analyzing the application of Education Code section 76365 and Title 5 regulations on instructional materials (§§ 59400-59408) in specific instances:

1. Required Material? Must the material be procured or possessed as a condition of enrollment or entry into a class, or to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours? If not, the material may be classifiable as "optional," and the regulations don't apply.

2. Tangible personal property? Is the material tangible personal property? If not, the regulations don't apply and some other legal authority must be found to authorize requiring the material or practice.

3. Owned or Controlled by the student? Is the material owned or primarily controlled by an individual student? If not, such materials can't be required.

4. Solely available from the district? Is the material not available through the district, or because the district requires that the material be purchased or procured from it? If so, do either of the two exceptions under Title 5, section 59402(c) apply so as to allow such material to be required?

5. Continuing value outside classroom setting? Can the material be taken from the classroom setting, and is it not wholly consumed, used up, or rendered valueless as it is applied in achieving those required objectives of a course which are accomplished under the supervision of an Instructor during class hours?

The answers to all of these questions must be "yes" for any material to be required of students.

### B. SPECIFIC INSTANCES WITHIN SCOPE OF REGULATIONS

1. Textbooks - Education Code section 76365 specifically mentions textbooks as materials which have continuing value outside of the classroom. As such, the general rule is that districts may require students to provide their own textbooks. However, these textbooks can't be solely or exclusively available from the district unless the exception of Title 5, section 59402(c) applies.

A generally published textbook (e.g. one published by Harcourt-Brace) which the college bookstore carries is generally available, even if local bookstores don't carry the text. On the

other hand, if a district is the sole publisher of a textbook, placing copies of the text in local bookstores will not automatically make it generally available.

2. Syllabi and Instructor-Prepared Materials - Syllabi and instructor prepared material are distinguished from textbooks in that they are generally prepared for specific courses offered by a college or district, and they are almost always solely or exclusively provided by a district. Such materials, in most instances, have continuing value outside of the classroom setting. The district will be required to provide these materials, however, unless the exception to Title 5, section 59402(c) can be applied. Specifically, the syllabi or instructor-prepared material must be provided at the district's actual cost, in lieu of other generally available but more expensive material which would otherwise be required.

A syllabus or instructor-prepared material costing a district $5.00 to provide to a student could be required in lieu of requiring the students to secure a nationally published textbook on the same subject which retailed for $10.00. A district's "actual cost" of producing materials which it solely or exclusively provides can include a small markup necessary for selling the item through the college bookstore. The overall premise is that neither a district nor its employees ought to be making a profit on materials which the district solely or exclusively provides.

Syllabi and instructor-prepared materials which are required, but are supplemental or in addition to other required materials, should be provided by the district. On the other hand, a syllabus or instructor-prepared material can be classified as "optional" if it is not required by the district, or is not required to complete the required objectives of a course to be accomplished under the direction of an instructor during class hours. In this regard, a syllabus or other material could be "highly recommended" without being required. Also a material could be designated for "required reading" without it actually being a required material.

3. Lab Books and Workbooks - Lab books and workbooks are distinguished from texts and instructor-produced materials in that they are written in extensively or have various exercises which result in pages being torn out. Generally speaking, even though such materials are altered, they retain some value to the student outside of the classroom setting, and therefore can be required of students. Sheet music is another example of workbook-type material which can be required.

4. Laboratory Animals - Under most conditions, required laboratory animals must be provided by the district because they have no continuing value to the student outside of the classroom setting. This general rule, however, does not require a district to provide an unlimited supply of laboratory animals. Laboratory animals in addition to those reasonably needed for completion of course objectives can be sold as "optional" materials.

5. Clay - Clay is an example of a "transformed" material which, under most circumstances, can retain continuing value outside of the classroom setting. For instance, a district could require that a student provide 20 pounds of a given clay in order to take a course. The clay can be sold through the college bookstore if the student wishes to purchase it there. The clay, converted into objects and fired in a kiln, can be taken from the classroom by the student. The clay is not wholly consumed, used up or rendered valueless in the process of becoming an object.

A critical distinction to apply with respect to transformed materials is whether the transformed material becomes part of something that a student will take from a class, or part of something that is just used for practice, and will not become the property of a student. Materials used in practice--objects which don't become the property of the student--should be provided by the district; whereas if the material is part of an object which becomes the property of the student, it can be required.

Another method to handle transformed materials such as clay is to provide the material for free, but to charge the student for any transformed material which he or she wishes to take from the classroom. Under this method, the material doesn't become the permanent property of the student until he or she chooses to buy it. In any case, if students are required to provide clay, the transformed objects must become their property.

Other examples of transformed materials which can have value to the student outside of the classroom setting include wood, metal, film, photographic paper, oil paints, canvas, cloth, food and paper generally.

6. Welding Rods - Welding rods are an example of a "transformed" material which, under most circumstances, have no continuing value outside of the classroom setting after being used. A welding rod is rendered valueless in the process of being used for practice welds. Hence, a district must provide those rods necessary to complete those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours. Extra welding rods for practice or in addition to those needed to complete required objectives may be sold to the student as optional material.

Welding rods and other transformed materials can have continuing value under limited circumstances, however. If welding rods are used to make a project or material which a student will take from the class, the student can be required to provide the rods that will be used for the project. For instance, if the welding rods are used to make an art object and the art object becomes the property of the student, welding rods may be required. Other examples of transformed materials which are usually rendered valueless after use include chemicals, gasoline, diesel fuel, and medical supplies such as Band-Aids, sterile syringes, and catheters.

7. Uniforms and Clothing - Education Code section 76365 specifically itemizes clothing as a material which is of continuing value to a student outside of the classroom setting. Students can be required to provide their own uniforms and clothing.

8. Bluebooks - Used bluebooks if returned, are materials of continuing value to the student outside of the classroom setting. If the district is the sole provider of bluebooks, they must be provided to students at the district's actual cost. If used bluebooks are not returned they are not of continuing value to the student and thus should be provided by the district.

9. Required Tests - Required tests are instructional materials, and have continuing value to the student, if they are returned. However, in instances where districts are the sole or exclusive

provider of tests and neither of the exceptions in Title 5, section 59402(c) apply, tests should be provided free.

Optional test or tests not required for entry or enrollment into a class can be charged for within the parameters of the "permissive code," Education Code section 70902(a).

10. Computer paper - Computer paper is a material which can be used by many students, but which can have continuing value to students. For instance, a district could require that each student provide a specified quantity and brand of computer paper in order to enroll in a course. A student wouldn't necessarily be using the box of computer paper he or she bought, but as long as he or she was entitled to keep all printouts, and as long as the student would generate roughly the quantity of paper he or she provided, a student could be required to provide computer paper.

11. Photographic Chemicals - Photographic chemicals are a material which can be used by many students, but which usually will have no continuing value to students outside of the classroom setting. Unlike computer paper, photographic chemicals can be tainted through misuse and tend to become used up in the classroom setting. If photographic chemicals are kept separate for each student and are given to students upon completion of the class, students can be required to provide them.

12. Recording Tape, Video Tape, Floppy Discs - Recording tape, video tape, floppy discs and other such reusable recording materials generally have continuing value to students outside of the classroom setting. They are generally available, tangible personal property of continuing value that is owned or controlled by the student.

13. Flowers and Food - Flowers for a flower arrangement class are an example of a material which can be required, with the student having the option to purchase them from the district. The district can specify the required flowers which the student needs and then provide the student with an option to purchase all necessary flowers from the district for a specified price. The same is true of food for a cooking class.

14. Equipment - Education Code section 76365 specifically mentions equipment as a material which has continuing value to the student outside of the classroom setting. Thus, students can be required to provide their own equipment for classes.

**C. SPECIFIC INSTANCES OUTSIDE SCOPE OF REGULATIONS**

1. Performances - Requiring a student to see a play, film, concert or other performance is not an instructional or other material, and not covered by the regulations. A district may require a student to see a specified play, film, concert or performance, but in order to generate ADA for the student's attendance at the performance the district must provide for attendance free of charge to the student. If seeing a performance is accomplished through a field trip, students may be asked to pay for incidental expenses, including entrance fees to the performance, but no student can be denied the right to participate in the field trip due to lack of funds. (See Title 5, §§ 55450-55451.)

2. Charge for Use of Equipment - In lieu of requiring students to provide certain expensive equipment, one suggestion is that students be given the option to "rent" the equipment from the district for the duration of the course. The instructional materials regulations do not address rental of equipment that is required by a district. Rather, the regulations only address the authority of districts to require the equipment.

Generally speaking, rental of equipment should be classified as an "optional fee," and thus would be authorized within the parameters of the permissive code. Districts should not subsidize their equipment budgets by renting equipment which students should not be expected to own. For instance, it would be improper to require students to provide a certain $5,000 television camera and then offer them the "option" of renting one for use during the class for $20 per semester.

3. Models for Art Classes - Models for art classes have no continuing value to the student outside of the classroom setting. They are not owned or primarily controlled by individual students. Therefore, students cannot be required to pay for models in art classes.